

# Senate Study Bill 1269

SENATE FILE \_\_\_\_\_  
BY (PROPOSED COMMITTEE ON  
STATE GOVERNMENT BILL BY  
CHAIRPERSON CONNOLLY)

Passed Senate, Date \_\_\_\_\_ Passed House, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

## A BILL FOR

1 An Act providing for energy performance-based contracts for  
2 certain public entities.  
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:  
4 TLSB 1977SC 82  
5 rn/cf/24

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1 1 Section 1. NEW SECTION. 297A.1 STATE POLICY.  
1 2 The general assembly finds that investment in energy  
1 3 conservation measures by public facilities can reduce the  
1 4 amount of energy consumed by the facilities and produce both  
1 5 immediate and long-term cost savings. It is the policy of  
1 6 this state to encourage school districts, area education  
1 7 agencies, community colleges, public universities,  
1 8 municipalities, counties, and state institutions, and other  
1 9 applicable political subdivisions to invest in facility  
1 10 technology infrastructure upgrades and energy conservation  
1 11 measures that reduce energy consumption, produce operational  
1 12 cost savings, or improve the quality of indoor air, or, when  
1 13 economically feasible, to build, operate, maintain, or  
1 14 renovate public facilities in a manner which will minimize  
1 15 operational costs and maximize energy savings. It is  
1 16 additionally the policy of this state to encourage  
1 17 reinvestment of these savings resulting from energy  
1 18 conservation measures and facility technology infrastructure  
1 19 upgrades into additional and continued energy conservation  
1 20 efforts, including but not limited to instructional computer  
1 21 hardware, software, and other technology, equipment, or  
1 22 training needed to maintain or operate technology systems.  
1 23 Sec. 2. NEW SECTION. 297A.2 DEFINITIONS.  
1 24 As used in this chapter, unless the context otherwise  
1 25 requires:  
1 26 1. "Energy conservation measure", "facility improvement  
1 27 measure", or "facility technology infrastructure upgrade"  
1 28 means an employee training program, facility alteration, or  
1 29 equipment to be used in construction, including an addition to  
1 30 an existing facility, that reduces energy consumption and  
1 31 operational costs, and includes but is not limited to any of  
1 32 the following:  
1 33 a. Insulation of the facility structure or systems within  
1 34 the facility.  
1 35 b. Storm windows or doors, caulking or weather stripping,  
2 1 multiple-glazed windows or doors, heat-absorbing or  
2 2 heat-reflective glazed and coated window or door systems,  
2 3 additional glazing, reductions in glass area, or other window  
2 4 and door system modifications that reduce energy consumption.  
2 5 c. Automated or computerized energy control systems  
2 6 including related software-required network communication  
2 7 wiring, computer devices, or wiring and support services for  
2 8 building maintenance or delivery of energy conservation  
2 9 services. Energy control system technology infrastructure may  
2 10 be used, as applicable, for other public entity technology  
2 11 needs.  
2 12 d. Heating, ventilating, or air conditioning system  
2 13 modifications or replacements.  
2 14 e. Replacement or modification of lighting fixtures to  
2 15 increase the energy efficiency of the lighting system which,  
2 16 at a minimum, shall conform to the applicable state or local  
2 17 building code.  
2 18 f. Energy recovery systems.

2 19 g. Renewable energy systems, such as but not limited to  
2 20 solar, biomass, and wind energy systems.  
2 21 h. Devices that reduce or monitor water consumption or  
2 22 sewer charges.  
2 23 i. Any measure not otherwise defined that produces energy  
2 24 consumption or operational cost savings or efficiencies.  
2 25 If any measure results in an increase in revenue to the  
2 26 public entity, this revenue may also be used in the economic  
2 27 justification for a project.

2 28 2. "Energy consumption or operational cost savings" means  
2 29 a measured reduction in fuel or energy consumption, or  
2 30 operation and maintenance cost savings, created from the  
2 31 implementation of one or more energy conservation measures or  
2 32 facility technology infrastructure upgrades when compared with  
2 33 an established baseline for previous fuel or energy  
2 34 consumption, or operation and maintenance costs. Reduction in  
2 35 staff may not be included as an operational cost savings.

3 1 3. "Energy performance-based contract" means a contract  
3 2 for the recommendation and implementation of energy  
3 3 conservation measures, facility improvement measures, or  
3 4 facility technology infrastructure upgrades which includes, at  
3 5 a minimum, all of the following:  
3 6 a. The design and installation of equipment to implement  
3 7 one or more energy conservation measures, facility improvement  
3 8 measures, or facility technology infrastructure upgrades, and,  
3 9 if applicable, operation and maintenance of such measures or  
3 10 upgrades.  
3 11 b. The amount of any actual annual energy consumption or  
3 12 operational cost savings. The amount shall be guaranteed in  
3 13 the contract by the qualified provider and shall be verified  
3 14 by a licensed professional engineer or registered architect  
3 15 who is not employed with the qualified provider. This  
3 16 verification shall follow the process utilized by the  
3 17 international performance measurement and verification  
3 18 protocol.

3 19 4. "Energy performance-based evaluation" means performance  
3 20 of an energy audit, data collection, or other related analyses  
3 21 preliminary to the undertaking of energy conservation  
3 22 measures, facility improvement measures, or facility  
3 23 technology infrastructure upgrades, and maintenance of project  
3 24 monitoring and data collection to verify postinstallation  
3 25 energy consumption and energy-related operating costs. Any  
3 26 cost for support services for building maintenance or delivery  
3 27 of energy conservation services that will continue beyond the  
3 28 length of an energy performance-based contract shall be  
3 29 identified specifically in the energy performance-based  
3 30 evaluation.

3 31 5. "Maintenance cost savings" means verified operating  
3 32 expenses eliminated and future capital replacement  
3 33 expenditures avoided as a result of new equipment installed or  
3 34 services performed by the qualified provider, including but  
3 35 not limited to savings which can be measured by an itemization  
4 1 of the maintenance cost savings between operational savings  
4 2 and personnel savings.

4 3 6. "Public entity" means a school district as described in  
4 4 chapter 274, area education agency as described in chapter  
4 5 273, community college as defined in chapter 260C, public  
4 6 university, city, county, or state agency.

4 7 7. "Qualified provider" means a business that has been  
4 8 qualified by the department of natural resources or accredited  
4 9 by the national association of energy service companies. The  
4 10 department shall adopt rules pursuant to chapter 17A to  
4 11 establish a qualifications process and criteria which shall  
4 12 include consideration of accreditation by the national  
4 13 association of energy service companies.

4 14 Sec. 3. NEW SECTION. 297A.3 REQUESTS FOR PROPOSALS AND  
4 15 EVALUATION.

4 16 1. Prior to entering into an energy performance-based  
4 17 contract as provided in section 297A.4, a public entity shall  
4 18 announce a request for proposals. A request for proposals  
4 19 shall be advertised for public bidding and let publicly. A  
4 20 public entity shall administer the public bidding and letting,  
4 21 requesting innovative solutions and proposals for energy  
4 22 conservation measures and facility technology infrastructure  
4 23 upgrades. Proposals submitted shall be sealed. The request  
4 24 for proposals shall include, at a minimum, all of the  
4 25 following:  
4 26 a. Name and address of the public entity.  
4 27 b. Name, address, title, and telephone number of a contact  
4 28 person for the public entity.  
4 29 c. Notice indicating that the public entity is requesting

4 30 qualified providers to propose energy conservation measures  
4 31 and facility technology infrastructure upgrades to be provided  
4 32 pursuant to an energy performance-based contract.

4 33 d. A request for qualified provider documentation of  
4 34 accreditation by the national association of energy service  
4 35 companies or qualification by the department.

5 1 e. Date, time, and place where proposals must be received.

5 2 f. Evaluation matrix for assessing the proposals.

5 3 g. A request for qualified provider documentation of  
5 4 ability to provide training and follow-up instruction to  
5 5 public entity employees regarding routine and normal  
5 6 maintenance of any equipment or system installed or altered by  
5 7 an energy audit and regarding the repair or installation of  
5 8 new or existing equipment, for the duration of the performance  
5 9 guarantee bond or energy performance-based contract.

5 10 h. Any other stipulations and clarifications the public  
5 11 entity may require.

5 12 2. a. Sealed proposals shall be opened by a designated  
5 13 member or employee of the governing body of the public entity  
5 14 at a public meeting during which the contents of the proposals  
5 15 shall be announced.

5 16 b. The public entity shall evaluate any sealed proposal  
5 17 from a qualified provider. The public entity shall analyze  
5 18 each qualified provider's estimate of design, engineering,  
5 19 installation, maintenance, repairs, debt service, conversions  
5 20 to a different energy or fuel source, and postinstallation  
5 21 project monitoring, data collection, and reporting. The  
5 22 evaluation shall include a detailed analysis of whether the  
5 23 energy consumed or operating costs, or both, will be reduced.

5 24 c. Each person submitting a sealed proposal must receive  
5 25 at least ten days' notice of the time and place of the public  
5 26 meeting at which the public entity proposed to award an energy  
5 27 performance-based contract pursuant to section 297A.4.

5 28 Sec. 4. NEW SECTION. 297A.4 AWARD OF ENERGY

5 29 PERFORMANCE-BASED CONTRACT.

5 30 1. a. A public entity shall select a qualified provider  
5 31 that best meets the needs of the public entity based on a life  
5 32 cycle cost analysis as defined in section 470.1. A public  
5 33 entity may enter into an energy performance-based contract  
5 34 with a qualified provider if it finds, after evaluating the  
5 35 proposal pursuant to section 297A.3, that the total amount the  
6 1 public entity would spend on the design, implementation,  
6 2 financing, and performance management of the energy  
6 3 conservation measures, facility improvement measures, or  
6 4 facility technology infrastructure upgrades and modernization  
6 5 measures recommended in the proposal would not exceed the  
6 6 amount of energy consumption or operational cost savings, or  
6 7 both, within a twenty-year period from the date of  
6 8 installation of such measures or upgrades, based on a life  
6 9 cycle cost analysis, if the recommendations in the proposal  
6 10 are followed. The useful life of the equipment of each  
6 11 individual improvement must be within the length of the  
6 12 contract.

6 13 b. After completing its evaluation of the proposals  
6 14 received pursuant to section 297A.3, the public entity shall  
6 15 provide public notice of the public meeting at which it  
6 16 proposes to award an energy performance-based contract. The  
6 17 public notice shall contain the names of the parties to the  
6 18 proposed contract and the purpose of the contract. The public  
6 19 notice shall be published at least ten days prior to the  
6 20 public meeting.

6 21 2. A public entity may enter into a financing agreement as  
6 22 provided in sections 473.19, 473.20, and 473.20A for purchase  
6 23 and installation of energy conservation measures, facility  
6 24 improvement measures, or facility technology infrastructure  
6 25 upgrades, or may secure financing through a third party for  
6 26 the purchase and installation of energy conservation measures,  
6 27 facility improvement measures, or facility technology  
6 28 infrastructure upgrades. Energy performance-based contracts  
6 29 may extend beyond the fiscal year in which they become  
6 30 effective, and may be automatically renewed annually for up to  
6 31 twenty years.

6 32 3. A qualified provider shall be responsible for the  
6 33 measurement and verification of the savings generated by the  
6 34 energy conservation measures, facility improvement measures,  
6 35 or facility technology infrastructure upgrades. A public  
7 1 entity may have these savings verified by a qualified  
7 2 independent third party on an annual basis. The verification  
7 3 shall also include an annual reconciliation of the guaranteed  
7 4 energy consumption and operational cost savings for the life  
7 5 of any financing agreement obligations or until the project is

7 6 repaid from energy and operational savings. The cost of this  
7 7 verification shall be a part of an ongoing contract with the  
7 8 qualified provider. A business or person accredited by the  
7 9 national association of energy service companies shall be  
7 10 qualified in Iowa.

7 11 4. The selected qualified provider shall provide a one  
7 12 hundred percent performance guarantee bond to the public  
7 13 entity for the installation and faithful performance of the  
7 14 installed energy conservation measures, facility improvement  
7 15 measures, or facility technology infrastructure upgrades as  
7 16 outlined in the energy performance-based contract.

7 17 5. A public entity has the right to terminate an energy  
7 18 performance-based contract at any time provided that written  
7 19 notice to the qualified provider is provided at least sixty  
7 20 days prior to termination. A qualified provider shall include  
7 21 clear statements and requirements regarding contract  
7 22 termination as part of the contract documentation. The  
7 23 documentation shall clearly state the options of the public  
7 24 entity to satisfy the contract early and include all  
7 25 associated costs. The documentation shall also state the  
7 26 rights of a public entity under a contract for terminating the  
7 27 contract due to nonperformance, and for listing all costs and  
7 28 responsibilities for payment of any remaining debt associated  
7 29 with energy consumption and operational cost savings already  
7 30 implemented. The information and associated costs described  
7 31 in this subsection shall be provided to a public entity before  
7 32 an energy performance-based contract is approved.

7 33 6. An energy performance-based contract shall include a  
7 34 written guarantee by a qualified provider regarding the amount  
7 35 of any actual energy consumption and operational cost savings.  
8 1 The guarantee shall meet or exceed the total annual contract  
8 2 payments, including financing charges, made by the public  
8 3 entity over the life of the contract. A qualified provider  
8 4 shall reimburse a public entity for any shortfall of  
8 5 guaranteed energy consumption and operational cost savings  
8 6 projected in the contract. Actual savings documentation shall  
8 7 be reconciled on an annual basis as provided in the contract.  
8 8 Savings shortfalls shall be made whole by the qualified  
8 9 provider within sixty days. Excess documented and mutually  
8 10 agreed upon savings may be carried over to future years. A  
8 11 qualified provider shall guarantee the savings for the length  
8 12 of the contract. An energy performance-based contract may  
8 13 provide for payments over a period of time, not to exceed  
8 14 twenty years.

8 15 7. Nothing in this chapter shall be construed to prohibit  
8 16 public entities from utilizing savings resulting from energy  
8 17 conservation measures, in excess of the amount needed to pay  
8 18 for the measures, for discretionary budget operations  
8 19 including but not limited to school instructional computer  
8 20 hardware, software, technology training, upgrades, or other  
8 21 similar uses.

8 22 8. If an energy performance-based contract entered into by  
8 23 a public entity results in the layoff of union bargaining unit  
8 24 members, the public entity shall notify the union within sixty  
8 25 days of an implementation which would affect bargaining unit  
8 26 positions. If, as a result of a layoff procedure where  
8 27 positions are eliminated or hours of work are reduced,  
8 28 benefits are affected or other subjects covered in a  
8 29 collective bargaining agreement are impacted, the public  
8 30 entity shall offer the affected employees other employment  
8 31 within the public entity. Other employment shall first be  
8 32 sought within the affected employee's department and county of  
8 33 employment. Affected employees shall not be subject to loss  
8 34 of pay or employment based on the initiation of an energy  
8 35 performance-based contract.

#### 9 1 EXPLANATION

9 2 This bill allows public entities, through a request for  
9 3 proposals process, to enter into energy performance-based  
9 4 contracts with qualified providers for purposes of undertaking  
9 5 one or more energy conservation measures, facility improvement  
9 6 measures, or facility technology infrastructure upgrades.

9 7 The bill provides that a public entity may enter into an  
9 8 energy performance-based contract with a qualified provider if  
9 9 it finds, after evaluating the proposal, that the total amount  
9 10 it would spend on the design, implementation, financing, and  
9 11 performance management of the energy conservation measures,  
9 12 facility improvement measures, or facility technology  
9 13 infrastructure upgrades recommended in the proposal would not  
9 14 exceed the amount of either energy consumption or operational  
9 15 cost savings, or both, within a 20-year period from the date  
9 16 of installation, based on life cycle and performance analyses,

9 17 if the recommendations in the proposal are followed.  
9 18 The bill provides that a qualified provider shall be  
9 19 responsible for the measurement and verification of the  
9 20 savings generated by the energy conservation measures,  
9 21 facility improvement measures, or facility technology  
9 22 infrastructure upgrades. The bill provides that a public  
9 23 entity shall have these savings verified by a qualified  
9 24 independent third party. The bill provides that a public  
9 25 entity has the right to terminate an energy performance-based  
9 26 contract at any time provided that written notice to the  
9 27 qualified provider is provided at least 60 days prior to  
9 28 termination.  
9 29 The bill provides that an energy performance-based contract  
9 30 shall include a written guarantee by a qualified provider of  
9 31 the amount of any actual energy consumption and operational  
9 32 cost savings. The bill provides that a qualified provider  
9 33 shall reimburse a public entity for any shortfall of  
9 34 guaranteed energy consumption and operational savings  
9 35 projected in the contract. The bill provides that a qualified  
10 1 provider shall guarantee the savings for the length of the  
10 2 contract and shall also provide the public entity with 100  
10 3 percent performance bonds for installation, construction, and  
10 4 retrofit projects.  
10 5 The bill specifies that these provisions shall not be  
10 6 construed to prohibit public entities from utilizing savings  
10 7 resulting from energy conservation measures for discretionary  
10 8 budget operations, to the extent the savings exceed the amount  
10 9 needed to pay for the measures.  
10 10 The bill provides that if an energy performance-based  
10 11 contract initiated by a public entity results in the layoff of  
10 12 union bargaining unit members, the public entity shall notify  
10 13 the union within 60 days of an implementation which would  
10 14 affect bargaining unit positions. The bill contains  
10 15 provisions regarding efforts to maintain employment in the  
10 16 event of initiation of a layoff, and states that employees  
10 17 shall not be subject to loss of pay or employment as a result  
10 18 of initiating an energy performance-based contract.  
10 19 LSB 1977SC 82  
10 20 rn:nh/cf/24